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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHARON MASSEY,

Plaintiff,

v.

CAROLYN W. COLVIN,¹
Acting Commissioner of Social
Security,

Defendant.

) Case No. CV 12-9222-OP

) MEMORANDUM OPINION AND
) ORDER

The Court² now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).³

¹ Carolyn W. Colvin, the current Acting Commissioner of Social Security, is hereby substituted as the Defendant herein. See Fed. R. Civ. P. 25(d)(1).

² Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 11, 12.)

³ As the Court advised the parties in its Case Management Order, the decision in this case is being made on the basis of the pleadings, the Administrative Record and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which

(continued...)

I.

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issues raised by Plaintiff as the grounds for reversal and/or remand are as follows:

- 1) Whether the Administrative Law Judge (“ALJ”) properly considered Plaintiff’s testimony; and
 - 2) Whether the ALJ properly considered the lay witness testimony.
- (JS at 4.)

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Perales, 402 U.S. at 401 (citation omitted). The Court must review the record as a whole and consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986). Where evidence is susceptible of more than one rational interpretation, the Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).

³(...continued)
party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 4 at 3.)

III.
DISCUSSION

A. The ALJ's Findings.

The ALJ found that Plaintiff has the following severe impairments: obesity, insulin-dependent diabetes mellitus, and high blood pressure. (Administrative Record (“AR”) at 14.) The ALJ concluded that Plaintiff retains the residual functional capacity (“RFC”) to perform a range of light work with the following limitations: occasionally pushing and pulling with the feet; no crawling; occasional climbing of stairs; no working near unprotected heights; no climbing ladders; no working around unusual amounts of dusts, fumes, and gases; no driving long distances; and enduring only occasional temperature changes. (*Id.* at 15.)

Relying on the testimony of the vocational expert (“VE”), the ALJ determined that given Plaintiff’s age, education, work experience, and RFC, she is capable of performing the requirements of such light occupations as: sorter (Dictionary of Occupational Titles (“DOT”) No. 222.687-014); inspector (DOT No. 529.687-186); and folder (DOT No. 369.687-018). (AR at 18.) Thus, the ALJ determined that Plaintiff has not been under a disability, as defined by the Social Security Act. (*Id.*)

B. The ALJ Properly Evaluated Plaintiff's Credibility.

Plaintiff asserts that the ALJ failed to provide clear and convincing reasons for rejecting her subjective complaints. (JS at 5-14, 23.) Specifically, Plaintiff states that “the ALJ decision is void of any sufficient rationale at all as to why the ALJ ignored and disregards Ms. Massey’s testimony.” (*Id.* at 7.) Plaintiff also contends that the ALJ rejected Plaintiff’s testimony using boilerplate language “because that testimony is inconsistent with what the ALJ believes it should be,” or only “because it lacks support in the objective medical evidence.” (*Id.* at 8-9.) Moreover, Plaintiff claims that her attempt to maintain “some semblance of

1 normalcy in her life in performing minimal activities of daily living” does not
2 detract from her credibility as to her overall disability because it does not
3 correspond to an ability to perform work activity. (Id. at 11.)

4 **1. Legal Standard.**

5 An ALJ’s assessment of pain severity and claimant credibility is entitled to
6 “great weight.” Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v.
7 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). When, as here, an ALJ’s disbelief of
8 a claimant’s testimony is a critical factor in a decision to deny benefits, the ALJ
9 must make explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231
10 (9th Cir. 1990); Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981); see also
11 Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990) (an implicit finding that
12 claimant was not credible is insufficient). The ALJ must set forth “findings
13 sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily
14 discredit claimant’s testimony.” Thomas, 278 F.3d at 958; Rollins v. Massanari,
15 261 F.3d 853, 856-57 (9th Cir. 2001); Bunnell, 947 F.2d at 345.

16 Once a claimant has presented medical evidence of an underlying
17 impairment which could reasonably be expected to cause the symptoms alleged,
18 the ALJ may only discredit the claimant’s testimony regarding subjective pain by
19 providing specific, clear, and convincing reasons for doing so. Lingenfelter v.
20 Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007). An ALJ’s credibility finding
21 must be properly supported by the record and sufficiently specific to ensure a
22 reviewing court that the ALJ did not arbitrarily reject a claimant’s subjective
23 testimony. Bunnell v. Sullivan, 947 F.2d 341, 345-47 (9th Cir. 1991).

24 An ALJ may properly consider “testimony from physicians . . . concerning
25 the nature, severity, and effect of the symptoms of which [claimant] complains,”
26 and may properly rely on inconsistencies between claimant’s testimony and
27 claimant’s conduct and daily activities. See, e.g., Thomas v. Barnhart, 278 F.3d
28 947, 958-59 (9th Cir. 2002) (citation omitted). An ALJ also may consider “[t]he

1 nature, location, onset, duration, frequency, radiation, and intensity” of any pain
2 or other symptoms; “[p]recipitating and aggravating factors”; “[t]ype, dosage,
3 effectiveness, and adverse side-effects of any medication”; “[t]reatment, other
4 than medication”; “[f]unctional restrictions”; “[t]he claimant’s daily activities”;
5 “unexplained, or inadequately explained, failure to seek treatment or follow a
6 prescribed course of treatment”; and “ordinary techniques of credibility
7 evaluation,” in assessing the credibility of the allegedly disabling subjective
8 symptoms. Bunnell, 947 F.2d at 346-47; see also Soc. Sec. Ruling 96-7p; 20
9 C.F.R. 404.1529 (2005); Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595,
10 600 (9th Cir. 1999) (ALJ may properly rely on plaintiff’s daily activities, and on
11 conflict between claimant’s testimony of subjective complaints and objective
12 medical evidence in the record); Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir.
13 1998) (ALJ may properly rely on weak objective support, lack of treatment, daily
14 activities inconsistent with total disability, and helpful medication); Johnson v.
15 Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (ALJ may properly rely on the fact
16 that only conservative treatment had been prescribed); Orteza v. Shalala, 50 F.3d
17 748, 750 (9th Cir. 1995) (ALJ may properly rely on claimant’s daily activities and
18 the lack of side effects from prescribed medication).

19 **2. Analysis.**

20 As stated by the ALJ, Plaintiff alleged problems with blacking out due to
21 her uncontrolled diabetic blood sugars, dizziness, shortness of breath, weakness,
22 and lethargy. (AR at 16.) She claims that she has stopped going out for walks
23 because she experiences dizziness and shortness of breath, requiring her to sit or
24 lie down. (Id.) She also contends her weakness, lethargy, and dizziness preclude
25 her from taking care of her grandchildren. (Id.)

26 The ALJ then provided additional clear and convincing reasons for his
27 discounting of Plaintiff’s subjective complaints.

28 First, the ALJ found inconsistencies between Plaintiff’s claimed limitations

1 and objective medical findings. (AR at 16.) To the extent the ALJ relied on the
2 fact that the objective medical evidence does not support Plaintiff's alleged
3 severity of symptoms, although a lack of objective medical evidence may not be
4 the sole reason for discounting a plaintiff's credibility, it is nonetheless a
5 legitimate and relevant factor to be considered. Rollins v. Massanari, 261 F.3d
6 853, 857 (9th Cir. 2001). Here, the report of Dr. Bailey, the medical expert, found
7 that Plaintiff retained the RFC consistent with a less than full range of light work
8 (AR at 16), while the consultative examiner and State Agency medical reviewer
9 assessed Plaintiff as capable of medium work (id. at 17). The ALJ gave Plaintiff
10 the benefit of the doubt by giving greater weight to the opinion of the medical
11 expert. (Id.) The ALJ noted that according to the medical expert, Plaintiff's
12 alleged symptoms of weakness, lethargy, and dizziness could not be attributed to
13 her severe impairments. (Id. at 16.) Morgan, 169 F.3d at 600 (a conflict between
14 subjective complaints and objective medical evidence in the record is a sufficient
15 reason that undermines a claimant's credibility).

16 Furthermore, the ALJ did not rely on this factor alone. He also noted
17 inconsistent statements made by Plaintiff regarding the basis for her disability.
18 For instance, the records of Plaintiff's treating physician, Dr. Young Harding,
19 consistently showed that despite Plaintiff's allegations of disabling symptoms,
20 Plaintiff regularly denied those problems typically associated with diabetes and
21 hypertension, including chest pain, shortness of breath, dysuria, urinary
22 frequency, headaches, hypoglycemia, and visual disturbances. (AR at 16.) The
23 ALJ concluded that Plaintiff's statements in the treatment notes were not
24 consistent with her subjective complaints and, therefore, "cast[ed] a blemish upon
25 her overall credibility." (Id.) This is a specific and legitimate reason for
26 discounting Plaintiff's credibility. Thomas, 278 F.3d at 959 (the ALJ properly
27 drew an adverse credibility inference based on inconsistent statements).

28 In addition, the ALJ noted that treatment notes from Dr. Harding dated

1 December 2005 through January 2008 document “little more than routine, follow-
2 up care” for Plaintiff’s diabetes and hypertension. (AR at 16.) Conservative or
3 infrequent treatment may be used by the ALJ to refute allegations of disabling
4 pain. See Johnson, 60 F.3d at 1434.

5 The ALJ also found that Plaintiff was noncompliant with a relatively
6 conservative treatment regimen. The ALJ noted that Plaintiff’s “diabetes would
7 be much better controlled” if she would lose weight, but Plaintiff was “poorly
8 compliant with her exercise regimen.” (AR at 16.) The ALJ noted that Plaintiff
9 could be expected to have problems with weakness if she did not get out
10 frequently to exercise. (Id.) Again, this is a specific and legitimate reason for
11 discounting credibility. Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) (an
12 ALJ is permitted to consider lack of treatment in his credibility determination);
13 see also Soc. Sec. Ruling 82-59 (when a disabling condition is amenable to
14 treatment, claimant must follow the course of treatment); id. 96-7p (an individual
15 may be less credible for failing to follow prescribed treatment without cause); 220
16 C.F.R. § 416.930 (applicant must follow treatment).

17 Even so, the ALJ noted that Plaintiff’s diabetes, obesity, and hypertension
18 were “better controlled” by October 2007, and that she was “doing well” by
19 January 2008. (AR at 16.) As such, because Plaintiff’s diabetes, obesity, and
20 hypertension could be controlled effectively, her complaints that she was unable
21 to work as a result of her severe impairments were properly discounted. Odle v.
22 Heckler, 707 F.2d 439, 440 (9th Cir. 1983) (where claimant’s multiple
23 impairments were controllable by medication or other forms of treatment, ALJ did
24 not err by finding impairments did not significantly limit claimant’s exertional
25 capabilities); Crane v. Shalala, 76 F.3d 251, 254 (9th Cir. 1996) (ALJ properly
26 considered claimant’s good response to treatment).

27 Based on the foregoing, the Court finds the ALJ’s credibility finding was
28 supported by substantial evidence and was sufficiently specific to permit the Court

1 to conclude that the ALJ did not arbitrarily discredit Plaintiff's subjective
2 testimony. Thus, there was no error.

3 **C. The ALJ Properly Considered the Lay Witness Testimony.**

4 Donisha West, identified as Plaintiff's daughter, testified that she gives her
5 mother insulin shots when her mother becomes too weak, dizzy, and lightheaded;
6 that her mother sweats a lot; and that her mother does not like to socialize. (AR at
7 57.) Plaintiff contends it was error for the ALJ to disregard these statements
8 without explanation. (JS at 20.)

9 Title 20 C.F.R. §§ 404.1513(d) and 416.913(d) provides that, in addition to
10 medical evidence, the Commissioner "may also use evidence from other sources
11 to show the severity of [an individual's] impairment(s) and how it affects [his]
12 ability to work," and the Ninth Circuit has repeatedly held that "[d]escriptions by
13 friends and family members in a position to observe a claimant's symptoms and
14 daily activities have routinely been treated as competent evidence." Sprague v.
15 Bowen, 812 F.2d 1226, 1232 (9th Cir. 1987). This applies equally to the sworn
16 hearing testimony of witnesses (see Nguyen v. Chater, 100 F.3d 1462, 1467 (9th
17 Cir. 1996)), as well as to unsworn statements and letters of friends and relatives.
18 See Schneider v. Comm'r of Soc. Sec. Admin., 223 F.3d 968, 975 (9th Cir. 2000).
19 If the ALJ chooses to reject such evidence from "other sources," he may not do so
20 without comment. Nguyen, 100 F.3d at 1467. The ALJ must provide "reasons
21 that are germane to each witness." Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir.
22 1993).

23 The ALJ's failure to address lay witness testimony generally is not
24 harmless. Curry v. Sullivan, 925 F.2d 1127, 1131 (9th Cir. 1991). In failing to
25 address a lay witness statement, the error is harmless only if "a reviewing court . .
26 . can confidently conclude that no reasonable ALJ, when fully crediting the
27 testimony, could have reached a different disability determination." Stout v.
28 Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1056 (9th Cir. 2006); see also

1 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006).

2 Here, the ALJ failed to address the testimony of Plaintiff's daughter. A
3 review of that testimony, however, demonstrates that it is not inconsistent with the
4 ALJ's findings and, therefore, it is not at all clear that the ALJ actually rejected
5 this evidence. Accordingly, there was no need for the ALJ to discuss this
6 evidence.

7 For instance, Donisha West's statement that Plaintiff becomes too weak,
8 dizzy, and lightheaded to give herself insulin shots (AR at 57) is reflected in the
9 ALJ's findings that Plaintiff is able to perform less than a full range of light work
10 with nonexertional limitations, including only occasional pushing and pulling with
11 the feet, no crawling, occasional climbing of stairs, no working at unprotected
12 heights or climbing ladders, no working around unusual amounts of dusts, fumes,
13 and gases, no driving long distances, and the ability to tolerate only occasional
14 temperature changes. (AR at 16.)

15 However, even if the ALJ's failure to address the opinions of Plaintiff's
16 daughter was error, the error is harmless because no reasonable ALJ would have
17 reached a different disability determination having considered it. Stout, 454 F.3d
18 at 1056; Robbins, 466 F.3d at 885. This is because the opinions of Plaintiff's
19 daughter basically mirrored the subjective complaints of Plaintiff, which were
20 properly rejected by the ALJ, as discussed in part above. (See Discussion Part
21 III.B.) Thus, the Court finds that even if this testimony was fully considered, no
22 reasonable ALJ could have reached a different disability determination.
23 Accordingly, any error was harmless.

24 Based on the foregoing, the Court finds that relief is not warranted on
25 Plaintiff's claim.

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IV.

ORDER

Based on the foregoing, IT IS THEREFORE ORDERED, that judgment be entered affirming the decision of the Commissioner of Social Security and dismissing this action with prejudice.

Dated: July 24, 2013



HONORABLE OSWALD PARADA
United States Magistrate Judge